



# Arizona State Senate *Issue Brief*

September 21, 2006

## **Note to Reader:**

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## **ORGAN AND TISSUE DONATION**

### **INTRODUCTION**

An anatomical gift is a donation of organs and tissues to take effect on or after death. Organs that can be donated include the heart, intestines, kidneys, liver, lungs and pancreas. Tissues that can be donated include corneas, heart valves and skin. Donations may be used in people who have organ failure, who are blind or who have severe burns or serious diseases. Donations may also be used for research related to diseases, disabilities and injuries. According to the U.S. Department of Health and Human Services, the demand for organs and tissues far exceeds the number of those available.

The Uniform Anatomical Gift Act, which has been enacted by all 50 states and the District of Columbia, established the first comprehensive and uniform laws regarding organ and tissue donations. Arizona first adopted this act in 1970 and adopted a revised version in 1996. The Revised Arizona Anatomical Gift Act (Revised Act) authorizes persons to consent to, amend, revoke or refuse to make an anatomical gift. The Revised Act establishes the decision to donate as legally binding, sets forth the obligations for hospitals and organ procurement agencies with respect to obtaining consent of donation and immunizes hospitals, persons, requestors and other entities that comply with the Revised Act in good faith from civil liability.

### **FEDERAL REGULATION AND OVERSIGHT**

In 1984, Congress enacted the National Organ Transplant Act, which prohibited the buying and selling of organs for transplantation and established the Organ Procurement and Transplantation Network, a private, nonprofit system operated by an organization under federal contract that is responsible for developing an equitable system of organ allocation, maintaining an organ waiting list and tracking transplant data. The United Network for Organ Sharing (UNOS) was awarded the federal contract in 1986. UNOS members include every transplant center and organ procurement organization (OPO) in the United States, as well as many tissue typing laboratories. OPOs are nonprofit entities that are certified by the federal Centers for Medicare and Medicaid Services to facilitate organ recovery services in

designated areas in the United States. OPOs are the link between the organ donor, the transplant center and the recipient. They may also facilitate tissue recovery for transplant and/or research either directly or through referral to tissue, skin or eye banks in their area.

Effective March 16, 2000, the U.S. Department of Health and Human Services (HHS) implemented final rules designed to increase organ and tissue donation. Under the final rules, hospitals that receive Medicare or Medicaid funding must notify the appropriate OPO of all imminent brain deaths and cardiac deaths that occur. The OPO then determines the individual's medical suitability for donation, discusses donation with surviving family members and arranges for the surgical removal and transport of donated organs and tissue. The OPO is charged with educating hospital staff about the donation and procurement processes and helping hospitals develop and implement written protocols for donor identification. According to the regulations, an OPO coordinator or an OPO-trained hospital staff member must serve as a designated donation requestor to inform families in a timely manner of their option to donate one or more of the organs and tissue.

The Donor Network of Arizona (Network) is the designated OPO for Arizona. The Network also facilitates tissue and eye recovery for transplantation in Arizona. In some cases, hospitals and funeral homes may contract with other facilities to provide tissue recovery services for either transplant, research or both.

## **ARIZONA REGULATION**

### ***Executing a Document of Gift***

Prior to passage of the Revised Act, an individual could become an organ or tissue donor by filing a sworn affidavit with the Motor Vehicle Division (MVD) when applying for a driver license. When the driver license expiration dates were extended in 1996, the Revised Act eliminated the ability to become a donor through the MVD. Today an individual may make an anatomical gift only by signing a document of gift (defined as a card, will or any

other writing used to make a gift). An anatomical gift may be made in a will, whether or not the will is probated after the donor's death. If the donor is unable to personally sign the document, another person may be directed to sign by the donor in the presence of the two witnesses who must also sign.

Current law allows an individual who has executed a document of gift to place a label designated by an OPO on the individual's driver license to notify others of the document of gift. Individuals may also file a document of gift with the Arizona Donor Registry (Registry), which was established by the Legislature in 2002 to maintain documents of gift for the purpose of expediting a match between donors and potential recipients. The Registry, maintained by the Network, must make information regarding potential donors available to organ procurement agencies on a 24-hour basis, seven days a week.

Under current law, an anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any other person after the donor's death. If a person has not executed a document of gift or has not refused to make an anatomical gift, hospitals, physicians and organ procurement personnel will rely on family or next of kin confirmation and consent or refusal. By statute, consent to organ and tissue donation is sought from these individuals in the following order of priority: a person designated in the decedent's health care power of attorney, the decedent's court appointed guardian, the spouse, an adult child, a parent, a domestic partner, an adult sibling, a close friend. If the next of kin refuses consent, no organs or tissue will be taken.

### ***Amending or Revoking a Gift***

A donor may, at any time, amend or revoke an anatomical gift. This may occur through any of the following methods: a signed statement, an oral statement made in the presence of two people, a statement made during a terminal illness or injury addressed to an attending physician or a signed statement to a specified donee to whom a document of gift has been delivered. A donor may also refuse to make an

anatomical gift by any of the following methods: a revised document of gift, a statement accompanying the donor's driver license, any other writing that identifies the person's refusal to make an anatomical gift or any communication during the person's terminal illness or injury.

## ***Limitations on Anatomical Gifts***

The execution of an anatomical gift may specify that all or part of the body may be used. This authorization also allows any examination necessary to assure the medical acceptability of the gift. If the gift is of the entire body, where appropriate, the body may be embalmed (particularly in the case of medical school donations). However, whole body donations for other research and educational programs are typically not embalmed. If the gift is for some parts of the entire body, these will be removed as soon as possible after death and the remainder of the body returned to the person responsible for disposition. In any event, donation does not mean that the family cannot also engage the services of a funeral home for funeral or memorial services conducted separately from the final disposition of the body.

## ***Potential Gift Recipients***

A donor may specify any of the following to become recipients of anatomical gifts for the purposes stated:

- any hospital, surgeon or physician, organ, tissue or eye bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.
- any accredited medical or dental school, college or university for education, research or advancement of medical or dental science.
- any specified individual for therapy or transplantation needed.
- any OPO.

It is also acceptable to make an anatomical gift without specifying a recipient. In this instance, the gift may be accepted by any of the above.

## ***Responsibility of Hospitals Regarding Anatomical Gifts***

In the absence of a donor's document of gift or refusal to donate, the hospital is required to notify an OPO of a potential donor. A trained requestor, either a representative of the OPO, organ, tissue or eye bank, or a hospital employee trained by the OPO or bank, must discuss donation and obtain the decision-maker's written consent or written refusal to make an anatomical gift. Requestors must give decision-makers copies of the forms they sign authorizing donation of an anatomical gift of an organ or tissue.

A hospital, person, requestor or entity that complies with the hospital protocols is not liable for civil damages or legal action resulting from its good faith acts or omissions related to organ or tissue procurement.

## ***ADDITIONAL RESOURCES***

- Donor Network of Arizona  
[www.dnaz.org](http://www.dnaz.org)
- Arizona Donor Registry  
[www.azdonorregistry.org](http://www.azdonorregistry.org)
- American Association of Tissue Banks  
[www.aatb.org](http://www.aatb.org)
- Association of Organ Procurement Organizations  
[www.aopo.org](http://www.aopo.org)
- National Foundation for Transplants  
[www.transplants.org](http://www.transplants.org)
- National Transplant Society  
[www.organdonor.org](http://www.organdonor.org)
- The Living Bank  
[www.livingbank.org](http://www.livingbank.org)
- United Network for Organ Sharing  
[www.unos.org](http://www.unos.org)
- U.S. Department of Health and Human Services  
[www.organdonor.gov](http://www.organdonor.gov)
- Revised Arizona Anatomical Gift Act Statutes: Arizona Revised Statutes, Title 36, Chapter 7, Article 3